

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HARMONY GOLD U.S.A., INC.,

Plaintiff,

v.

HAREBRAINED SCHEMES LLC,
HAREBRAINED HOLDINGS, INC.,
JORDAN WEISMAN, PIRANHA GAMES
INC., INMEDIARES PRODUCTIONS,
LLC, and DOES 1-10

Defendants.

CASE NO. 2:17-cv-00327-TSZ

**DECLARATION OF JESSICA
STEBBINS BINA IN SUPPORT OF
HARMONY GOLD U.S.A., INC.'S
MOTION TO SEAL**

**NOTE ON MOTION CALENDAR:
DECEMBER 22, 2017**

I, Jessica Stebbins-Bina, declare as follows:

1. I am an attorney and partner at Latham & Watkins LLP, attorneys for plaintiff
Harmony Gold U.S.A., Inc. I am over eighteen years of age, and am competent to testify herein.

I make the following statements based on my personal knowledge.

2. This declaration is submitted in support of plaintiff's Motion to Seal.

3. Before filing this motion to seal, I met and conferred with counsel for all non-
defaulted defendants (including counsel for the Harebrained entities and Jordan Weisman,
Warren Rheume and James Corning of Davis Wright Tremaine LLP, and counsel for Piranha
Games, Inc., Todd Fairchild and Ryan Meyer of Dorsey & Whitney LLP) pursuant to Local Civil

1 Rule 5(g)(A). I discussed the subject of the motion to seal, and the content to be sealed, in a
2 telephonic conference with defendant's counsel on December 8, 2017. After the call,
3 defendants' counsel informed me via e-mail that they could not consent to sealing at the time of
4 the conference, but would consider their position upon review of Harmony Gold's filed motion
5 to seal. Attached hereto as **Exhibit A** is a true and correct copy of the e-mail correspondence
6 with defendants' counsel.

7 4. In 2016 and 2017, Harmony Gold and Tatsunoko engaged in mediation and an
8 arbitration proceeding (the "Arbitration"), pursuant to which discovery was taken and documents
9 were exchanged. In connection with a prior mediation, the parties to the Arbitration both signed
10 a "Confidentiality and Non-Disclosure Agreement," agreeing to keep confidential certain non-
11 public information disclosed by either party in connection with the mediation or the subsequent
12 Arbitration.

13 5. During the Arbitration, the arbitrator entered a further order requiring the parties
14 to produce certain traditionally secret documents, that the parties otherwise considered
15 themselves unable to produce due to confidentiality restrictions in those documents, subject to
16 appropriate confidentiality parameters (the "Discovery Order").

17 6. Harmony Gold's Opposition to Summary Judgment, and the accompanying Bina
18 Declaration, briefly describe two such documents produced confidentially by Tatsunoko. These
19 are discussed in the context of Harmony Gold's alternative request for relief pursuant to Rule
20 56(d). As counsel for Harmony Gold, I believe that Harmony Gold is obligated, pursuant to the
21 Confidentiality and Non-Disclosure Agreement, the Discovery Order, and related conversations
22 with Tatsunoko's counsel, to file these descriptions under seal in order to maintain the
23 confidentiality of the underlying documents.

24 I declare under penalty of perjury under the laws of the United States of America that the
25 foregoing is true and correct.

1 Signed this 11th day of December, 2017, at Los Angeles, California.

2
3 By: s/ Jessica Stebbins Bina

4 Jessica Stebbins Bina
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 11, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the CM/ECF participants.

DATED this 11th day of December, 2017.

s/ Susie Clifford

Susie Clifford

EXHIBIT A

From: [Stebbins Bina, Jessica \(CC\)](#)
To: [fairchild.todd@dorsey.com](#); [meyer.ryan@dorsey.com](#); [JamesCorning@dwt.com](#); [WarrenRheaume@dwt.com](#); [Meiklejohn.Paul@dorsey.com](#)
Cc: [Stebbins Bina, Jessica \(CC\)](#)
Subject: RE: Sealing meet and confer
Date: Friday, December 08, 2017 5:36:00 PM
Attachments: [image001.png](#)

Thank you for getting back to me. I am well aware of the sealing requirements, and intend to keep our requested sealing limited as necessary to comply with an existing confidentiality agreement and order by the arbitrator. We will file the motion to seal, noting that you have deferred taking a position on it.

Best regards,

Jessica Stebbins Bina

LATHAM & WATKINS LLP
10250 Constellation Blvd. Suite 1100
Los Angeles, CA 90067
Direct Dial: +1.424.653.5525
Fax: +1.424.653.5501
Email: jessica.stebbinsbina@lw.com
<http://www.lw.com>

From: fairchild.todd@dorsey.com [mailto:fairchild.todd@dorsey.com]
Sent: Friday, December 08, 2017 5:34 PM
To: Stebbins Bina, Jessica (CC) <Jessica.StebbinsBina@lw.com>; meyer.ryan@dorsey.com; JamesCorning@dwt.com; WarrenRheaume@dwt.com; Meiklejohn.Paul@dorsey.com
Subject: RE: Sealing meet and confer

Jessica –

I am writing to follow up on our meet-and-confer this afternoon regarding your planned motion seeking leave of court to file under seal certain portions of the papers you are filing on Monday. Please note that in the Western District of Washington “There is a strong presumption of public access to the court’s files.” LCR 5(g). Under Local Rule 5, you will need to file a motion to seal, and receive the Court’s approval, to keep anything sealed in the court file. You will need to file a motion whether or not the other parties stipulate to sealing the document in question. See LCR 5(g)(2)(B). Under the current circumstances, we are not comfortable stipulating at this time, because we have not seen the underlying documents, the statements you want to seal, or your motion explaining why sealing is proper here. Since you are required to file a motion to seal in any event, we suggest that you file the motion, and we will review it and indicate to the Court whether we have any objection.

Best regards,

Todd

Todd S. Fairchild
Of Counsel



DORSEY & WHITNEY LLP
Columbia Center
701 Fifth Avenue, Suite 6100 | Seattle, WA 98104-7043
P: 206.903.8889 F: 206.260.9113 C: 206.465.3255

WWW.DORSEY.COM :: [SEATTLE](#) :: [BIO](#) :: [V-CARD](#)

CONFIDENTIAL COMMUNICATION

E-mails from this firm normally contain confidential and privileged material, and are for the sole use of the intended recipient. Use or distribution by an unintended recipient is prohibited, and may be a violation of law. If you believe that you received this e-mail in error, please do not read this e-mail or any attached items. Please delete the e-mail and all attachments, including any copies thereof, and inform the sender that you have deleted the e-mail, all attachments and any copies thereof. Thank you.

-----Original Appointment-----

From: Meyer, Ryan On Behalf Of Jessica.StebbinsBina@lw.com

Sent: Thursday, December 7, 2017 7:37 PM

To: Fairchild, Todd

Subject: Fwd: Sealing meet and confer

When: Friday, December 8, 2017 3:00 PM-3:30 PM (UTC-08:00) Pacific Time (US & Canada).

Where:

Begin forwarded message:

From: "Jessica.StebbinsBina@lw.com" <Jessica.StebbinsBina@lw.com>
To: "Meyer, Ryan" <meyer.ryan@dorsey.com>, "JamesCorning@dwt.com"
<JamesCorning@dwt.com>, "WarrenRheaume@dwt.com"
<WarrenRheaume@dwt.com>, "Meiklejohn, Paul"
<Meiklejohn.Paul@dorsey.com>
Subject: Sealing meet and confer

Assuming this time works for everyone, please use the below dial-in for tomorrow's call.

Dial in: 1-877-205-3155
Passcode: 100728

Best regards,

Jessica Stebbins Bina

LATHAM & WATKINS LLP
10250 Constellation Blvd. Suite 1100
Los Angeles, CA 90067
Direct Dial: +1.424.653.5525
Fax: +1.424.653.5501
Email: jessica.stebbinsbina@lw.com<[mailto://jessica.stebbinsbina@lw.com](mailto:jessica.stebbinsbina@lw.com)>
<http://www.lw.com><<http://www.lw.com>>

This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review, disclosure, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies including any attachments.

Latham & Watkins LLP or any of its affiliates may monitor electronic communications sent or received by our networks in order to protect our business and verify compliance with our policies and relevant legal requirements.

Latham & Watkins LLP
